ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA)
NOTICE OF WATER DISCHARGE PERMIT PUBLIC HEARING

PEABODY ARCLAR MINING, LLC

WILDCAT HILLS (COTTAGE GROVE PIT/WILDCAT UG)
AND WILLOW LAKE MINE

TRANSCRIPT OF PUBLIC HEARING

THURSDAY, SEPTEMBER 15, 2011, 5:00 P.M.

Transcript of Public Hearing for Water Discharge Permit taken on September 15, 2011, at 5:00 p.m., at the SIC Foundation Center, 540 North Commercial Street, in the city of Harrisburg, state of Illinois, before Andrea M. Murphy, Registered Professional Reporter, Illinois Certified Shorthand Reporter No. 084-004558, Missouri Certified Court Reporter No. 989.

A P P E A R A N C E S

Dean Studer, Hearing Officer
Iwona Ward
Larry D. Crislip
Brian T. Koch
Stefanie N. Diers

Illinois Environmental Protection Agency.

HEARING OFFICER STUDER: My name is Dean Studer, and I'm the hearing officer for the Illinois Environmental Protection Agency. On behalf of the Interim Director Lisa Bonnett and Bureau Of Water Chief Marsha Willhite, I welcome you to tonight's hearing. The Illinois EPA believes that the public hearings that we hold are a crucial part of the permit review process for the proposed Peabody Arclar Cottage Grove Mine.

My purpose tonight is to ensure that these proceedings run properly, according to rules, and in a fair but efficient manner. To that end I will start by reading this opening statement into the record.

This is an informational hearing before the Illinois IEPA in the matter of a national pollutant discharge elimination system (NPDES) permit application for surface coal mine facility of Peabody Midwest Mining, LLC, with proposed discharges of treated waste waters into Cockerel Branch, North Fork Saline River, unnamed tributaries of these 2 waters, as well as into unnamed tributaries of both the Middle Fork Saline River and Rocky Branch.

Following this hearing we will take a short break and then we will conduct the hearing for the 401 certification for this facility. Since we do not have Illinois EPA staff members here at the table from the 401 certification program, I ask that issues involved with the 401 certification be raised at the second hearing this evening. We would like to start the 401 hearing around 7:00.

Issues relevant to the NPDES permit include compliance with the requirements of the federal Clean Water Act and the rules set forth in 35 Illinois Administrative Code Subtitle C and D. Illinois EPA is not the state agency authorized to permit the mining operations at in the coal mine, so we will not accept issues specifically concerning operations at the proposed mine. However, we are empowered to review and make a decision regarding the issuance, denial, or revision of the NPDES permit, and that permit number is IL0073351. Please ensure that your comments are related to the NPDES permit.

The authority for the Illinois EPA to issue this permit is contained in Section 39 of

the Illinois Environmental Protection Act, 415 ILCS 5/39. In pertinent part, this section indicates it shall be the duty of the agency to issue such a permit once the application demonstrates to the agency that they will not cause a violation of the act or regulations promulgated hereunder. The decision by the agency in this matter will be based upon the technical merits of the application as it relates to compliance with this statute and regulations promulgated under it. The agency decision is not based on how many people desire for the permit to be issued or on how many people desire for the permit not to be issued but rather on compliance with the law and regulations.

The Illinois EPA has made a preliminary determination that the project meets the requirements for obtaining a permit and has repaired a draft permit for review.

The Illinois EPA is holding this hearing for the purpose of accepting comments from the public on the permit. Since we have a limited time in which to conduct this hearing, Illinois EPA staff members will be responding to issues when clarification is necessary.

The Illinois EPA is holding this hearing for the purpose of accepting comments from the public on the permit, and, again, since we have a limited time, I remind you all that we will be responding to issues only when necessary.

This public hearing is being held under the provisions of the Illinois EPA's procedures for permit and closure plan hearings which can be found in 35 Illinois Administrative Code 166, subpart A, in accordance with 35 Illinois Administrative Code 309, Subpart A. Copies of these regulations are available at the Illinois Pollution Control Board website at www.ipcb.state.il.us, or if you do not have easy access to the web you may contact me, and I can get a copy for you.

An informational public hearing means exactly that: This is strictly an informational hearing. It is an opportunity for you to provide information to the Illinois EPA concerning the permit. This is not a contested case hearing.

I would like to explain how tonight's hearings is going to proceed. First we will have the Illinois EPA panel introduce themselves and provide a sentence or 2 regarding their

involvement in the permit process. Then Iwona Ward from mine pollution control program at Illinois EPA in Marion will make a brief presentation regarding the permit. Following this, I will provide further instructions as to how statements and comments will be taken during this hearing and as to appropriate conduct during this hearing tonight. This will be followed by Brandon Risner, a manager at the mine, representing the permit applicant, Peabody Arclar Mining, making a brief statement this evening. After the brief remarks from Mr. Risner, I will allow the public to provide comments.

We would like to adjourn this hearing by around 6:45 if possible so that we can have a short break before commencing with the 401 certification hearing this evening. Again, because we have a limited time frame in which to conduct this hearing, I will enforce time limits for each speaker. The time limit will be announced as soon as I get an indication of how many people want to speak this evening. It will probably be in the neighborhood of 9 minutes. You may want to prioritize your comments so that you can make the comments at the hearing that you

desire to make.

If you have not completed a registration card at this point, please see Carol Fuller in the registration area and she can provide you with a card. You may indicate on the card that you would like to provide comments at the NPDES hearing. Additionally, if you plan to also comment during the 401 certification hearing, which will start at approximately 7:00 p.m., you should either indicate so on the card or let me know when you are making your comments on the NPDES permit this evening. Everyone completing a card, either at the NPDES hearing or the 401 hearing or filing written comments in either of these 2 proceedings with me before the close of the comment period, will be notified when the Illinois EPA reaches a final decision in each of these 2 matters. 2 separate responsiveness summaries will be prepared. These will be available at the time that we make a final decision in the corresponding matter.

In the responsiveness summary, the Illinois EPA will attempt to respond to all relevant and significant issues that were raised at this hearing or submitted to me prior to the

close of the comment period. The hearing record in this matter will close on October 6th, 2011. I will accept written comments as long as they are postmarked by October 6th. Please be sure to mark "NPDES" on the comments submitted for the NPDES hearing and "401" on the comments for the 401 proceeding. I know that this may be a bit confusing for some of us here tonight, but Illinois EPA appreciates your efforts in identifying the appropriate proceeding in which to enter the comments.

Comments can be filed electronically by e-mail at epa.publichearingcom@illinois.gov, and must specify "Peabody Arclar NPDES" in the subject line. Please make sure that these words are spelled correctly as e-mails are electronically sorted and distributed and may not make it into the record if the words in the subject line are misspelled. When your e-mail arrives, the system will send you an automated replay if the e-mail was received before the comment period ends and the e-mail has been properly sorted and distributed. I note that the server can become quite busy in the minutes before the record closes, so you may want to take

this into account when submitting your comments as electronic comments received on or after the stroke of midnight on October 26th [sic] as the day changes to October 27 [sic] will not be considered timely filed. The comment instructions and information are also included in the notice for this hearing. If you require any further information after the hearing on the filing of comments, you may contact me at 217/558-8280 or you may contact our community relations coordinator Carol Fuller at 217/524-8807 and either of us will be glad to assist you.

During this hearing and during the comment period, all relevant comments, documents, or data will be placed into the hearing record as exhibits. Please send all written documents or data to my attention at Dean Studer, Hearing Officer, Mail Code Number 5, Regarding Peabody Arclar NPDES, that's at Illinois EPA, 1021 North Grand Avenue East, PO Box 19276, Springfield, Illinois 62794-9276. This address is also listed on the public notice for the hearing tonight. Again, please indicate the NPDES Permit Number "IL0073351" or reference "Peabody Arclar

NPDES" on your comments to help ensure that they become part of this hearing record.

I note that everyone registering or submitting written comments to the Illinois EPA in either NPDES or 401 water quality certification proceeding will be put on the mailing list for both proceedings. These will be notified of the final decision by Illinois EPA in each of these 2 matters. Decisions in these 2 separate matters will not necessarily be made at the same time as each of these 2 has their own rules requirements and are handled in different parts of Illinois EPA.

I have marked the following exhibits in this record: The public hearing notice is Exhibit 1; the draft permit is Exhibit 2; a letter received from the office of US Senator Dick Durbin just indicating that he would be unable to attend hearing is Exhibit 3.

I would like to now ask the Illinois EPA panel to introduce themselves, and then Iwona Ward will make a brief presentation.

MR. CRISLIP: Good evening. My name is Larry Crislip. I'm manager of the permit section for the mine program for the agency.

MS. WARD: Iwona Ward. I'm permit engineer for Mine Pollution Control Program.

MS. DIERS: Stefanie Diers, legal counsel.

MR. KOCH: Brian Koch, water quality standards.

HEARING OFFICER STUDER: Then I will give a brief explanation of this permit renewal.

MS. WARD: Good evening, ladies and gentlemen. My name is Iwona Ward. I'm the permit engineer for the mine pollution control program for the Illinois Environmental Protection Agency. I would like to welcome everyone here this evening for this public hearing being held regarding draft renewal and modified NPDES Permit Number IL0073351 for Peabody Arclar Mining, LLC, Wildcat Hills Mine, Cottage Grove Pit/Wildcat Underground, and Willow Lake Mine.

The purpose of this renewed and modified NPDES permit is to regulate surface discharges to waters of the state from the surface facilities of this mining complex, commonly known as Cottage Grove. The previously issued permit for this facility covered an area of 6,005.5 acres. The current renewal of this

NPDES permit includes a modification to incorporate an additional area of 879.5 acres, to arrive at the final NPDES permit area for this facility of 6,858 acres. The additional area being incorporated into this permit includes the office of Mines and Minerals Permit Number 415 area.

The additional area, indicated as OMM Permit Number 415, being incorporated into the NPDES with this renewal includes 6 new discharges designated as Outfalls 028 through 033. Outfalls 028 through 032 will all discharge to unnamed tributaries of Cockerel Branch; while Outfall 033 will discharge to an unnamed tributary to North Fork Saline River.

31 outfalls are identified in the draft renewed and modified NPDES permit for this mining complex. This area includes the 6 new outfalls proposed in the OMM Permit Number 415 area. Of the 31 outfalls located at this facility, 28 outfalls are classified as alkaline mine drainage, 2 outfalls are classified as stormwater discharges, and 1 outfall is classified as sanitary wastewater discharge.

I would like to thank everyone for

coming this evening and welcome you to the Illinois EPA public hearing. Thank you.

HEARING OFFICER STUDER: Let me go over the instructions for accepting comments this evening.

While the issues raised tonight may indeed be heartfelt concerns to many of us in attendance, applause is not appropriate during the course of this hearing. On a similar note, booing, hissing, and jeering are also not appropriate and will not be allowed tonight.

Secondly, I'm am going to allow statements to be made tonight only that relate to the issues involved with the NPDES permit. Specifically, statements and comments that are of a personal nature or reflect on the character or motive of a person or group of people are not appropriate in this hearing. If statements or comments begin to drift into this area, I may interrupt the person speaking. As hearing officer, I intend to treat everyone here in a professional manner and with respect; I ask that the same respect be shown to those raising relevant issues. If the conduct of persons attending this hearing should become unruly, I am

authorized to adjourn this hearing should actions warrant. In such a case the Illinois EPA would accept written comments through the close of the comment period on, which ends on October 6th, 2011.

Since we have a limited time in which to conduct this hearing, the Illinois EPA staff members will be responding to issues primarily for clarification purposes. We are here tonight to listen to environmental issues. Comments regarding personalities are not appropriate and will not be allowed during this hearing. You may disagree with or object to some of the statements and comments made tonight, but this is a public hearing and everyone has a right to express their comments on this draft permit and related issues.

You are not required to provide your comments orally. Written comments are given the same consideration and may be submitted to the Illinois EPA at any time within the public comment period, again, which ends at midnight on October 6th, 2011. Although we will continue to accept comments through that date, tonight is the only time that we will accept oral comments. Any person who wishes to make an oral comment may do

so as long as the statements are relevant to the issues at hand.

If you have lengthy comments, it will be helpful to submit them to me in writing before the close of the comment period and I will ensure that they are included in the hearing record as exhibits. Please keep your comments relevant to the issue at hand. If your subjects fall outside the scope of this hearing, I may ask you to proceed to another issue. For the purpose of allowing everyone to have a chance to comment and to sure that we conduct this hearing in a timely fashion, I will impose a 9-minute per speaker time limit. I will attempt to indicate when you have 30 seconds left so that you can finish within the time limit. This should allow everyone that desires to speak to have the opportunity do so.

In addition, I'd like to stress that we went to avoid unnecessary repetition. If anyone before you has already presented a statement or comments that are contained in your comments, please skip over those issues when you speak. If someone has already said what you intended to say, you may pass when I call your

name to come forward. Once a point is made, it makes no difference if the point is made once or whether it is made 99 times. It will be considered and will be reflected only once in the responsiveness summary. All written comments, whether or not you say them out loud, will be become part of the official record and will be considered.

After everyone has had an opportunity to speak and provided that time permits, I may allow those who initially did not desire to speak to do so. If time still permits, I may then allow those who initially ran out of time to speak again. In the event that we cannot accommodate everyone who wishes to make comments this evening, you are asked to submit your comments to us in writing. Again, written comments are given the same weight as comments made orally at this hearing.

To assist those that wish to make written comments, we have comment forms available in the registration area. Please feel free to take a comment form with you when you leave this hearing tonight if you plan to file written comments. Again, I note that there are 2

different forms: 1 for comments on the NPDES permit for this facility and another form for the 401 certification facility. The NPDES comment forms are on purple or violet paper and the 401 comments are on green. Please make sure that you comment on the form that's appropriate for the proper proceeding. Illinois EPA desires to keep the 2 proceedings as separate as possible and will be compiling separate and different administrative records for each of the 2 proceedings. I also point out that it is not necessary that written comments are submitted on the forms as Illinois EPA will accept all written comments as long as the proceedings in which to file comments is specified.

I remind you that we have a court reporter here who is taking a record of these proceedings for the purpose of us putting together our administrative record. Therefore for her benefit please keep the general background noise in the room to a minimum so that she can hear everything that is said. Illinois EPA will post the transcript for this hearing on our web page in the same general place where the hearing notice, fact sheet, and draft permit have

been posted. It is my desire to have this posted in about 1 and a half weeks following the close of the hearing, but the actual date will depend on when I get the transcript back from the reporter.

When it is your turn to speak, please come forward to the podium. State your name and, if applicable, any governmental body, organization, or association that you represent. If you are not representing a governmental body, an organization, or an association, you may simply indicate that you are a concerned citizen or member of the public. For the benefit of the court reporter, I ask that you spell your last name. If there are alternate spellings for your first name, you may also spell your first name. Once you spell your name, I will start timing and you will have 9 minutes in which to complete your comments.

I ask that while you are speaking that you direct your attention to the hearing panel and to the court reporter to ensure that an accurate record of your comments are made. Prolonged dialogue with the members of the hearing panel or with others here in the audience

will not be permitted. Comments directed to the audience are also not allowed.

Again, I remind everyone that the focus of this hearing is the environmental issues associated with the NPDES permit.

People who have requested to speak will be called upon in the order that they registered.

Are there any questions regarding the procedures that will be used for conducting this hearing this evening?

Seeing that no one raised their hand, I'm going to ask that Mr. Risner come forward to the podium, if he would make the statement that he has this evening on behalf of the permit applicant.

MR. RISNER: Brandon Risner. I'm the operations manager at Cottage Grove Mine. Last name is R-I-S-N-E-R.

Thank you for the opportunity to speak. Many of our employees and their families have joined us here tonight because, like me, they care about the future of our mine, the jobs it provides, and the impact it has on them personally and the communities in which they

reside.

In total Cottage Grove employs approximately 190 hardworking people from local communities. These jobs provide $18 million in total annual wages and benefits. Altogether Peabody's southeastern Illinois operations provide employment for 1,250 people in Saline County and roughly 250 people in Gallatin County. In 2008 our operations had an economic impact of roughly $250 million in Saline County and $150 million in Gallatin County.

We are committed to being good stewards of the land. We are further committed to continuous improvement in all aspects of our operation, including environmental stewardship. We will utilize our well-trained staff and resources to comply with all the permit requirements. We look forward to resolving any issues regarding this permit renewal, and we look forward to receiving the appropriate approval as soon as possible.

Thank you.

HEARING OFFICER STUDER: Thank you, Mr. Risner.

The first person that I have is Traci

Barkley.

MS. BARKLEY: Good evening. My name is Traci Barkley, T-R-A-C-I B-A-R-K-L-E-Y. I'm a water resources scientist for the Prairie Rivers Network, I'm also a member of Prairie Rivers Network and a member of the Illinois chapter of the Sierra Club.

Prairie Rivers Network is the state affiliation of the National Wildlife Federation. We are a nonprofit organization that strives protect the rivers, streams, and lakes of Illinois and to promote the lasting health and beauty of watershed communities. Much of our work focuses on policies such as the Clean Water Act and Safe Drinking Water Act are used in Illinois. These are laws intended to protect our waters, our environment, and ultimately our health. Our organization has members that live and recreate in the Saline River watershed, the site of the proposed activities, related impacts, and have substantial interest in ensuring that discharges do not impair waters in the area.

So I would like to start out by first thanking you for holding this hearing and giving folks in the area and throughout the state an

opportunity to comment on the proposed activities.

1 of the issues that we are concerned about is that the expansion of mining activities under this permit would allow the discharges to waterways that have already been identified by your agency as impaired.

So I would like to point out 3 main segments that are impaired as noted by your agency but also bring attention to the fact that most of the segments that are receiving runoff from this site have not been characterized by the Illinois Environmental Protection Agency and so it's hard to say whether they are impaired and meeting their uses or not. They have not been given the same consideration as the streams that have been found.

So I guess, you know, to summarize, for the streams that have -- are receiving wastewater from the site and have received wastewater from previous mine activities, they are impaired or they have not been -- they have not been evaluated, so every site that has been looked at that has been impacted by mining is considered impaired right now.

The first one I would like to draw your attention to is the North Fork of the Saline River, which receives flow from Outfalls 001, 002, 006, 013, 014, 014WL, and 013 [sic]. So this is impaired due to alteration in stream-side or littoral vegetative covers and loss of instream cover. And obviously what's planned is expansion of mining and discharges from mining. Much of that activity would remove vegetation and change the landscape, which is exactly what it's been listing as causing the impairment for this stream.

The second segment is the Middle Fork of the Saline River, Segment ATG-03, receives flow from the unnamed tributary into which Outfall 016 discharges. That's classified as impaired due to alteration in stream-side or littoral vegetative cover, sedimentation and siltation, total suspended solids, changes in stream depth, and velocity patterns, among other things. Same thing at this site, preparation of the mining site, including vegetation removal, regrading, auger mining, impacts of large mine equipment including trucks, shovels, and dump trucks, boulders, et cetera, will further

contribute to loading of sediment, will remove vegetation that currently serve as sediment traps and filters, contributes to uptake of stormwater, and also provides habitats to aquatic or semi-aquatic species. So allowing for this mining to continue as proposed is setting these streams up to receive more of the offending materials and more of the changes in the landscape that contribute to these streams not being able to meet their needs right now.

Third, the Saline River, which is Segment AT-05, receives flow from the unnamed tributary into which Outfall 027 discharges. That also is listed as impaired due to alteration in stream-side or littoral vegetative cover, excessive amounts of boron, manganese, and loss of instream cover. I will say the same thing, continued mining activity will contribute to release of additional boron and manganese and changes in the landscape and habitat.

So considering that Illinois EPA's charge is to ensure that the water quality standards are met and the instream uses of these streams must be met while permitting an NPDES, I guess I would like to ask -- and this can be in

the responsiveness summary -- but how the agency can justify additional permitting of activities that contributed to the impairment of these stream segments.

Second, we're concerned about sedimentation ponds being created out of streams. It appears through the permit that several streams will be impounded to form treatment ponds that would be used for sedimentation of mine runoff. This is prohibited by law as these streams are considered waters of the state per Title 35 Illinois Administrative Code Section 301-440. Illinois EPA is charged with ensuring water quality standards be met in all waters of the state per 35 IAC 302.210.

So our recommendation is that the applicant develop off-line sedimentation basins, so instead of impounding a stream and taking that out of protections afforded by the Clean Water Act, that instead they create off-line sedimentation basins, direct runoff from the site to those sedimentation basins, and have an outfall from that sedimentation basin into a stream which is afforded protection as waters of the state by the Clean Water Act.

I can see from a map that was provided in the materials that they submitted to the Department of Natural Resources that they have done that throughout other previously mined portions, namely Pits 7 and 8, that there have been off-line sedimentation basins created, so it's obviously technically feasible and economically reasonable. I see no reason that that can't be seen here instead of impounding streams that harbor life and, you know, need protection.

We're also concerned, as we always are at these sites, that the agency has not fully characterized the condition and existing uses of the water bodies that are receiving mine stormwater discharge. We note the majority of streams that are proposed for receiving wastewater have not been fully characterized in terms of their function and what resides there. And I understand they have small watersheds, but talking to some of the folks that live around here and their experiences with the streams, we note there is fishing happening in these streams and they do provide habitat for aquatic and semi-aquatic species and feel that those streams

deserve a biological characterization to know what's there to begin with.

1 example would be that in the materials submitted as part of the DNR application for the mining permit, it was found that specimens of the fat pocketbook mussel, which is an endangered species, reside in the North Fork Saline River 2 and a half miles downstream of this mine site. So knowing that the habitat exist there and that this endangered species has resided there, we would like to see mussel surveys done in the upstream reaches that are proposed to be impacted by this site, either through discharges or mining through or creation of sedimentation basins. So we feel like a mussel survey needs to be conducted throughout the proposed site.

And just some technical issues. The antidegradation assessment notes that underground water located in a sealed section of the mine is proposed to be pumped and discharged through Outfall 006. So I wondered if a reasonable potential analysis had been done -- well, first, if that water had been characterized for what pollutants exist in that right now and if a

reasonable potential analysis had been done to determine whether current limits can be met at Outfall 006.

MR. KOCH: Traci, we did have data for Outfall 006 due to the new potential source from the underground pumpage, if that were to occur. We looked at chloride and hardness data in order to recalculate the sulfate standard. So the applicant did submit data to us to review.

MS. BARKLEY: Was there any data on metals in that water?

MR. KOCH: There may have been manganese. I'm not sure of other metals.

MS. BARKLEY: And is there any reason why manganese or mercury limit wasn't put at the outfall considering that contribution?

MS. WARD: I will look into this, and I will get back to you in the responsiveness summary.

MS. BARKLEY: Okay. Then at 001 there's a temporary coal crusher and coal stockpile that will be tributaries 001, so I wondered why -- I know it's been the practice of the agency in other mining permits where there is a coal source pile, either raw or washed coal,

that a manganese limit of 1 and a mercury monitoring requirement is put in place, and I wondered why that's not the case at 001.

MS. WARD: I will look into this also.

MS. BARKLEY: Okay. Then it looked like --

HEARING OFFICER STUDER: We have gone 9 minutes, but --

MR. KOCH: I just have one more -- I can save it actually.

HEARING OFFICER STUDER: If it's associated, I will let you go ahead and ask it rather than --

MS. BARKLEY: It's not. I will wait. Thank you.

HEARING OFFICER STUDER: Okay. Brian Perbix.

MR. PERBIX: I'm passing. Thanks.

HEARING OFFICER STUDER: Turn Treary. I'm sorry. Terri Treary.

MS. TREACY: Treacy? I'm 401.

HEARING OFFICER STUDER: You want to do 401. Okay.

Judith -- is it Killman?

MS. KELLEN: K-E-L-L-E-N.

I'm trustee for Cottage Township. Live in Cottage Township. I'm getting calls from the people that live there concerned about our living. Everything that the mines have done so far has been detrimental to the people that live in the township. When you're sitting at your kitchen table and your walls are going in and out -- we're scared because they are pushing us out of our homes. So anything they have done so far, I can't see where with them doing the water thing, it's going to be any better. And I have to answer to the people that I was elected to serve, and right now I don't like phone calls I'm getting.

HEARING OFFICER STUDER: Thank you.

That is through the first round of those that had indicated that they wanted to speak at the NPDES hearing. I know there is at least 1 person that wants to have additional comments. Before I go that route I want to ask if there's anyone here that hasn't spoken that would like to speak this evening.

Go ahead, Brian.

MR. PERBIX: Good evening. My name

is Brian Perbix, P-E-R-B-I-X, and I'm an organizer with the Prairie Rivers Network.

As Traci Barkley said, Prairie Rivers Network is the statewide affiliate of the National Wildlife Federation, a nonprofit organization that strives to protect the rivers, streams, and lakes of Illinois and to promote the lasting health and beauty of watershed communities here in Illinois. Prairie Rivers Network has members that live and recreate in the Saline watershed which is the side of the proposed activities, and our members would be impacted and have a substantial interest in ensuring that the NPDES permit for this mine would not impact their uses of those waters.

I just had a couple of follow-up questions to Traci's comments.

First, I did want to point out the history of at least 40 NPDES violations on the existing permit -- and you can address this in the responsiveness summary -- but I would like to know if the agency is aware of those and what will be done in the new permit to correct for those and anticipate from, you know, mistakes that have been made from following or not

following best management practices at the site so far.

And then from going through the IDNR materials, I had a couple questions about groundwater. And since there isn't someone from groundwater here today, should I just ask a couple questions for being addressed in the responsiveness summary?

The easternmost pit that's proposed for the expansion -- I believe it's Pit Number 9 -- I'm wondering about the baseline data that's been collected there, specifically how many monitoring wells have been installed in that area immediately adjacent to Pit Number 10 and how many -- you know, what time period of baseline data we have on groundwater quality and quantity there.

And then I would also be interested in a summary of what existing groundwater monitoring from the monitoring wells around the rest of the exiting site has shown to date and whether or not those -- that monitoring has shown the site to be in compliance for groundwater quality standards.

Third, just to follow up on the

previous comment that was made by Ms. Kellen from Cottage Township, I too have been speaking with folks around the mine site and have received numerous complaints about dust, blasting, and problems associated with management practices on-site. I'm wondering if EPA has been made aware of the violations that have been issued by IDNR for things like failure to control air blast, as well as failure to control dust impacts, and I would question whether or not those fall under following best mining practices as enumerated in the current NPDES proposed here tonight.

Thank you for your time.

HEARING OFFICER STUDER: Thank you, Mr. Perbix.

Ms. Barkley, did you have additional comments that you would like to make?

MS. BARKLEY: Traci Barkley, Prairie Rivers Network.

I wondered about coal washing, if coal washing is covered under this permit. There's a mention of it in the construction authorization -- let me see if I can find it -- page 43 of the construction authorization dated

July 15th, 2011, and it just -- so it describes a fine coal refuse underground injection system and then it mentions development of a coarse refuse disposal area but there really isn't any mention of the washing process or how that is handled under the NPDES permit. I'm wondering if that area is covered under this permit or if there is another NPDES permit that would handle that.

MS. WARD: The coal washing process, it is covered under this NPDES permit.

MS. BARKLEY: Okay. Can you describe -- I understand that there isn't a slurry impoundment like other mines, that the coal slurry is injected underground, but could you describe what the coal preparation process is at this site?

MS. WARD: I could respond in the responsiveness summary and describe exactly with the details.

MS. BARKLEY: Okay. Because looking through this permit, it appears -- trying to put the map together, it appears that there is a processing area and it seems like it would be tributaried to Sedimentation Basin 016, but nowhere in the permit does it state that, that

that is tributary.

And it seems to me that when you're storing the rock coal there and you're putting it through the processing plant and even if all the water is -- all the water that's used in washing is looped through the process again, that seems like 1 of the -- probably the dirtiest spots of the mine site, so seems like best management practices would be needed there, and that under the antidegradation assessment, that if there are 2 new pits that are being opened up, more coal would be sent to that processing facility and should be handled under the antidegradation regulations, and I didn't see that addressed in any way, either through the antidegradation assessment special conditions or the construction authorization.

MS. WARD: We will explain this exactly in the responsiveness summary.

MS. BARKLEY: Okay. Then I wondered if any groundwater monitoring had been done anywhere on the site and then specifically in the area where the coal washing is happening.

MS. WARD: We actually don't have anybody from the groundwater section with us

tonight, so we will take any comments and get back to you.

MS. BARKLEY: I guess in the responsiveness summary I would be interested in knowing if monitoring is taking place, where the sites are located, and if there are any exceedances of groundwater standards to date on-site.

Then when I look at -- I think it's page 49 -- Special Condition Number 12, it shows -- there's a table that shows the flow ratio of the receiving stream to the outfall discharge. And I was just looking in particular at 016, if that is the stream that's receiving runoff from the coal prep plant, that is the lowest ratio there. So I wondered if you could just explain to everybody how this table is used.

Because it appears to me that no discharge is during low-flow or no-flow conditions, so this is the ratio that's supposed to guide the plant operator, the mine operator, of when they would be able to discharge from the pond? I'm just wondering how one would apply that 0.72 to know whether this is a yes discharge situation or no discharge situation.

MR. KOCH: I believe what that special condition is referring to is the amount of flow required in the receiving stream in order to have that special permit limit that they are getting, whether it's mixing involved, when -- go ahead.

MS. BARKLEY: What are the units?

MR. KOCH: It's volume of flow of the effluent versus volume of flow of the receiving water.

MS. BARKLEY: So if you were an on-site operator, how would this condition in this permit be helpful?

MR. KOCH: I believe they have stream gauges in order to determine when mixing is available.

MS. BARKLEY: So they would need the volume of discharge in the stream and they would need to have a set volume of what they would want to be discharging from the pond and it would have to equal 0.72 for this to be allowed under this condition. Is that correct?

MR. KOCH: I believe so.

MS. BARKLEY: Okay. So, you know, I know a lot of these outfalls are receiving

runoff -- well, runoff from the site going to a sedimentation basin and then discharged into a stream, and depending on whether it's an active site or under reclamation, there's going to be different things going in.

To me, in looking at the worst case scenario, if, in fact, the coal prep plant is discharging 016, that's a pretty low ratio and that seems like probably the most egregious or high pollutant waste stream from the entire site.

So I guess I would like to ask the agency to show how that number was developed, you know, and really give an example. Because I think, you know, last time we were in this setting for this permit we talked about how confusing the permit was written in terms of different discharge scenarios, and we really appreciate the agency writing this in a way so you see the discharge condition, whether it's no precipitation, a little bit of precipitation, a lot of precipitin, it makes it easier for those folks that have to comply with this permit, they know how to read this and how to comply with the law. But I look at Special Condition Number 12 and I think this is pretty confusing and this is

a pretty important part of the permit, which is you can't discharge these discharges that are high in sulfates and chlorides and suspended solids and metals especially into streams that are already impaired unless there's sufficient flow to dilute it down. But this table, when I look at it, is not -- you can't just look at this and know what you are supposed to do.

I guess I would like to know does Arclar have another table they look at? Is there something in the field that directs them?

Because, you know, the ultimate question is: Is there any way to prevent discharge from those ponds? If it's full and you have had a rain event but maybe, you know, hasn't reached a stream yet -- I don't know. I guess I would just like to know kind of in a practical way how you make sure that these protections you're writing into this permit to ensure the water quality standards are being met can actually be met in practice. So I guess that's probably enough.

MR. KOCH: Traci, I have a follow-up to that.

Yeah, I'm not involved with creating

this table -- these tables in the permits or anything, but actually the lower the ratio means the less dilution that effluent really needs. So, for example, Outfall 19 requires much more dilution than Outfall 16.

And I believe that these ratios are developed using what the -- after you determine what the standard would be before, then after mixing, then you determine how much mixing you need in order to meet that standard, then you determine that's the minimum dilution you need from that point. If there's more dilution, then it's fine. If there's less than that dilution available, then you don't need any mixing and you have to meet the water quality standards. So I believe that's what the table is intended to describe.

MS. BARKLEY: Okay. Thank you.

I think, you know, for working for an organization that it's -- our entire purpose is to protect clean water, when I look at the stream and work backwards, I think, you know, we have a situation which is primarily precipitation driven, this is a huge strip mine, just driving by and seeing what's disturbed right now, then on

a map what's proposed to be disturbed, this is, you know, very flashy in terms of its impact to a stream, given, you know, what activity is going on and then what precipitation events happen. And then you look at the compliance record and see over 40 Clean Water Act violations in the past 3 years and know that the sampling is done when -- there are some guidelines as to when and where but it is self-regulated by the company.

So I think that the more you can write into this permit controls that allow for those operating the mine to be in compliance and know what's intended by this permit but also to ensure that the agency knows that what you put in the permit can be complied with and understand it, I think those steps really need to be taken because this is not an easy document to work through. And I think these streams, given that they are already struggling, deserve as much help as they can get.

MR. KOCH: Yeah.

I was wondering if you are going to include the NPDES violations in an exhibit?

MS. BARKLEY: Yeah. In fact, we have it printed out, and we can submit it tonight.

It's a snapshot of the last 12 quarters, all of the noncompliance, and I believe that for the most part they were violations of settleable solids, total suspended solids, and pH.

MR. KOCH: Thank you.

HEARING OFFICER STUDER: I will enter this into the record as Exhibit Number 4 then.

MS. BARKLEY: Thank you.

HEARING OFFICER STUDER: Is there anyone here this evening that has any additional comments on the NPDES that they would like to make this evening?

Okay. Seeing that no one raised their hand, then we are going to adjourn the NPDES hearing. We will commence with the 401 hearing at 7:00. I thank you for your attendance and your participation, and I remind everyone here that the record in this matter is open until October 6th. Thank you. The NPDES hearing is now adjourned.

STATE OF ILLINOIS)
) SS
COUNTY OF FRANKLIN)

I, Andrea M. Murphy, a Notary Public in and for the County of Franklin, State of Illinois, do hereby certify:

That the said proceeding was taken before me as a Notary Public at the said time and place and was taken down in shorthand writing by me;

That I am a Certified Shorthand Reporter of the State of Illinois, that the said proceeding was thereafter under my direction transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a full, true, and correct report of the proceedings which then and there took place;

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 19th day of September, 2011.

_____
Andrea M. Murphy, RPR, CSR, CCR
IL CSR #084-004558
Notary Public in and for the
County of Franklin,
State of Illinois